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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1982

No._____

In re
SAN DIEGO COUNTY ASSOCIATION
FOR THE RETARDED,

Petitioner,

vs.

UNITED STATES COURT OF APPEALS,
NINTH CIRCUIT and NATIONAL
LABOR RELATIONS BOARD,

Respondents.

PETITION FOR A WRIT OF CERTIORARI
To The United States Court of Appeals
For The Ninth Circuit

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

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In re
SAN DIEGO COUNTY ASSOCIATION
FOR THE RETARDED,

Petitioner,

vs.

UNITED STATES COURT OF APPEALS,
NINTH CIRCUIT and NATIONAL
LABOR RELATIONS BOARD,

Respondents.

MOTION FOR LEAVE TO FILE PETITION FOR WRIT OF CERTIORARI

SAN DIEGO COUNTY ASSOCIATION FOR THE RETARDED, Petitioner herein by JOHN S. ADLER, Esq. of ADLER and GNIATKOWSKI, attorneys of record, moves this Court as follows:

1. For leave to file the petition,

hereto annexed, for common law writ of certiorari.

2. Upon granting such leave, to issue a common law writ of certiorari in accordance with the prayer of said petition.

Dated: April 29, 1983.

Respectfully submitted,

ADLER and GNIATKOWSKI

By _____

JOHN S. ADLER
Attorney for Petitioner
SAN DIEGO COUNTY ASSOCIATION FOR THE RETARDED

QUESTIONS PRESENTED

1. Does Section 7 of the National Labor Relations Act protect employees who remain away from work after they have made a demand on the employer and after the employer has totally conceded to that demand?

2. Does Section 7 of the National Labor Relations Act protect employees who remain away from work to prevent the employer from finding out that they falsified their time sheets?

3. Does Section 7 of the National Labor Relations Act protect employees who act contrary to the directions of their own representatives and refuse to return to work?

4. Does Section 7 of the National

Labor Relations Act protect employees who, through their own representatives, misrepresented their intention to return to work which knowingly stopped the employer from calling in substitutes, thereby prolonging the existence of a dangerous shortage of staff to deal with mentally-retarded adults.

5. Does Section 7 of the National Labor Relations Act protect employees who have wilfully falsified in advance their time sheets by writing in that they were "sick" for the day they remained out of work, thereby attempting to get pay from the employer for the day they sought to apply economic pressure on the employer?

PARTIES TO THE PROCEEDING

The parties to this proceeding are Petitioner, San Diego County Association For The Retarded; Respondent, National

Labor Relations Board; charging party, Aiko Hinojosa; in addition, the discharged employees involved herein are Robert Acosta, James Dunkin, David Gilmore, Aido Hinojosa, Karen Pickell, Therese Sullivan, Genvieve West, and Warren Werwage.

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IN THE SUPREME COURT OF THE UNITED STATES

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UNITED STATES COURT OF APPEALS,
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Respondents.

PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE NINTH CIRCUIT

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

The Petitioner herein, San Diego County Association For The Retarded, respectfully

prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit entered in the case entitled National Labor Relations Board, Petitioner, v. San Diego County Association For The Retarded, Respondent, No. 82-7273 on April 1, 1983.

OPINIONS BELOW.

The Memorandum Decision of the United States Court of Appeals, Ninth Circuit, is unreported and is printed in Appendix A hereto, infra, page A-17. The Decision and Order of the National Labor Relations Board is reported at 259 NLRB 136 and is printed in Appendix A hereto, infra, at page A-21. The Decision of the Administrative Law Judge is unreported and is printed in Appendix A hereto, infra, at page A-28.

JURISDICTIONAL GROUNDS.

The Decision of the Administrative Law

Judge (Appendix A, infra, page A-28) was entered on August 17, 1981. The Decision and Order of National Labor Relations Board (Appendix A, infra, page A-21) was entered on January 13, 1982. The Memorandum Decision of the United States Court of Appeals, Ninth Circuit (Appendix A, infra, page A-17 was entered on April 1, 1983.

Jurisdiction to review the Judgment of the Court of Appeals by writ of certiorari is conferred on the Supreme Court under Title 28 of the United States Code, Section 1651(a) and under Rule 30 of Rules of the Supreme Court. Jurisdiction is further conferred on the Supreme Court under Title 28, United States Code, Section 101.14(c).

STATUTES INVOLVED

Relevant sections of the National Labor Relations Act, as amended (29 U.S.C. 151, et. seq.) are as follows:

Section 7 (29 U.S.C. 157):

> Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities . . .

Section 8(a)(1) and (5) (29 U.S.C. 158(a)(1) and (5)):

> It shall be an unfair labor practice for an employer--
>
> (1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 157 of this title;
>
> * * * *
>
> (5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 159(a) of this title.

Section 9(a) (29 U.S.C. 159(a)):

> Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: Provided, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect: Provided further, That the bargaining representative has been given opportunity to be present at such adjustment.

STATEMENT OF THE CASE.

1. This petition is filed pursuant to the authority to issue extraordinary writs vested in this Court by the provi-

sions of Section 1651(a), Title 28 United States Code, and Rule 30 of the Rules of this Court, to review the order of the United States Court of Appeals for the Ninth Circuit, dated April 1, 1983, enforcing the order of the National Labor Relations Board, dated January 13, 1982, which upheld the decision of the Administrative Law Judge, dated August 17, 1981.

2. Copies of the Administrative Law Judge's Decision, the Decision and Order of the National Labor Relations Board and the Memorandum Decision of the United States Court of Appeals for the Ninth Circuit are set forth in the Appendix to this petition.

3. Petitioner herein, San Diego County Association For The Retarded ("Association") maintains several facilities in San Diego County for the training

and education of mentally retarded adults (I.Q. range of 20 to 70). One such facility is Arrow Center which maintains its classes at an average ratio of five students for each teacher/instructor. The employees at Arrow Center chose Friday, April 25, 1980, to hold a "sick-out"; on this day it was known to the employees that Arrow Center was scheduled to operate short of at least seven staff members (out of 26) due to inadequate funding. When the employees left work on Thursday, April 24, 1980, they filled in their time sheets for April 25, 1980, by writing in "sick".

According to the Board's own witness and a person whose testimony the Administrative Law Judge specifically found to be credible (Ms. Karen Pickell), the representatives of the employees were supposed to call the group before classes

were to begin on Friday because it was understood that if the Association was willing to meet with the group, the group was going to go in and teach that day. This plan was corroborated by other employees.

On Friday, April 25, 1980, the representatives met with Arrow Center's supervisors and, after a discussion, prevented these supervisors from calling in substitutes for the classes by representing that the employees were prepared to return to work that day if the supervisors would agree to meet with the group. The supervisors totally and unconditionally agreed to do so. The representatives made no other demands or requests of the supervisors.

The employees gathered together that Friday morning at Karen Pickell's house which was a three or four minute drive from Arrow Center. The representatives

called and told the employees at least twice that their demand had been accepted and that they were to return to work. The representatives stated that the employees would be coming in "shortly"; the employer thus did not call in any substitutes. The representatives, expecting that the others would be joining them "shortly", went to work. The employees, however, did not return to work that day. Arrow Center was forced to operate at a ratio of at least ten mentally retarded adults for each teacher/instructor; uncontroverted expert testimony called this "a dangerous situation".

The employees were subsequently terminated for failing to return to work as promised after their demand had been met, thereby knowingly leaving the Center dangerously short of staff. The employer cited Staff Performance Regulations, Part B, which states:

> "The primary rule governing all staff conduct is the well-being of the clients committed to our care. The needs of the individual client take priority over all other aspects of a staff member's assigned work. The first responsibility of a staff member is the well-being and supervision of those clients."

The employees stated that the reason they did not return to work as directed by their representatives was that they didn't want to reveal the fact that they were, in actuality, not sick and had falsified their time sheets the previous day.

REASONS FOR GRANTING THE WRIT.

1. The relief herein sought is available, and there is an adequate remedy, by way of appeal to the Court of Appeals for the Ninth Circuit, and writ of certiorari to this Court. However, the Court of Appeals has granted enforcement of the Order of the National Labor Relations Board. Petitioner, therefore, has no re-

course to obtain review of this Order other than by application for common law writ of certiorari to this Court, or for issuance by this Court of a writ of mandamus to the Court of Appeals to again review the Board's Order and, in the event of an unfavorable decision, a subsequent application to this Court for writ of certiorari.

2. The issues involved in the present proceeding are of an exceptional character and of great public importance in that the decision of the National Labor Relations Board, as enforced by the Board:

a. is not in conformity with the National Labor Relations Act which attempts to encourage collective bargaining between labor and management. This decision extends protection to employees who remain away from work after their demands have been met in full. This

decision extends protection to employees who promise to return to work yet do not, to the detriment of a segment of the public which cannot care for themselves (mentally retarded adults).

b. is not in conformity with the National Labor Relations Act which encourages employees to act through their chosen representatives. This decision allows employees to remain protected while disregarding the instructions and negotiated resolution reached by their representatives.

c. purports to establish a "hindsight" approach to the question of "dangerous" condition in that the Administrative Law Judge dismisses the entire issue by concluding that since no serious accidents/incidents occurred, the situation was therefore not dangerous.

d. is not in conformity with the National Labor Relations Act which

protects only concerted activities. When the employees stayed away from work to avoid having their time sheet falsification revealed, they were not engaged in any concerted activity.

e. is not in conformity with the National Labor Relations Act which seeks to establish a balance of economic power between labor and management. When employees attempt to receive sick pay for the time they were attempting to exert economic pressure on the employer, they are not engaging in protected conduct.

3. a. Where the actions of the employees were based on a disloyalty to the employer which was unnecessary to carry on the legitimately-established goals and pre-arranged concerted activities of the group, their actions are indefensible and unprotected. NLRB v. Washington Aluminum Co., 370 U.S. 9 (1962); NLRB v. IBEW Local 1229, 346 U.S. 464 (1953).

b. When the employees chose not to return to work to avoid detection of their falsification of time sheets, they remained away for a personal reason, not a protected concerted reason. Lodges 743 and 1746, etc. v. United Aircraft, 534 F. 2d 422, 445 n. 39 (2d Cir. 1975).

c. "One of the primary purposes of the (National Labor Relations) Act is to promote the peaceful settlement of industrial disputes by subjecting labor-management controversies to the mediatory influence of negotiation." Fibreboard Paper Products Corp. v. NLRB, 379 U.S. 203 (1964).

d. The use of methods deemed contrary to the spirit of the National Labor Relations Act, although perhaps not the express terms thereof, will be regarded as unprotected. Emporium Capwell Co. v. Western Addition Community Organization, 420 U.S. 50 (1975).

e. The National Labor Relations Act has been interpreted to prohibit employees from both drawing wages and attempting to put economic pressure on the employer at the same time. NLRB v. Robertson Industries, 560 F. 2d 396, 398 (9th Cir. 1976).

f. In order to be protected the employee must choose either to be on the job and subject to the employer's rules or to be off the job and bear the commensurate economic burden. NLRB v. Kohler Co., 108 F. 2d 390, 397 (7th Cir. 1939); Shelly and Anderson Furniture Mfg. Co., Inc. v. NLRB, 497 F. 2d 1200, 1203 (9th Cir. 1974).

CONCLUSION.

Wherefore, Petitioner San Diego County Association For The Retarded prays that this Court issue a common law writ of certiorari to the Court of Appeals for the Ninth Circuit, to review the order of that

Court, entered on April 1, 1983, enforcing the Order of the National Labor Relations Board.

Petitioner further prays that this Court grant Petitioner such other and further relief as it may deem to be just and equitable.

Dated: April 29, 1983.

Respectfully submitted,

ADLER and GNIATKOWSKI

By

JOHN S. ADLER
530 "B" Street, Suite 2001
San Diego, CA 92101-4466

Counsel for Petitioner

A

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD, Petitioner, vs. SAN DIEGO COUNTY ASSOCIATION FOR THE RETARDED, Respondent.	)	No. 82-7273
	)	MEMORANDUM

Argued and Submitted: February 11, 1983

Petition for Enforcement of an Order of the National Labor Relations Board

Before: NELSON AND NORRIS, Circuit Judges, and SOLOMON,* District Judge.

The National Labor Relations Board (Board) petitions this court for enforcement of an order instructing the San Diego County

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* The Honorable Gus J. Solomon, Senior United States District Judge for the District of Oregon, sitting by designation.

Association for the Retarded (Association) to 1) reinstate discharged workers with back pay; 2) cease and desist from the unfair labor practices found and from in any other manner interfering with, restraining, or coercing its employees in the exercise of their statutory rights, and 3) post appropriate notices. The Board's order should be enforced in full.

The Board concluded that the Association's termination of certain employees for engaging in a protected strike violated section 8(a)(1) of the National Labor Relations Act (NLRA), 29 U.S.C. §158(a)(1). The Board's conclusion was based on findings that 1) the workers withheld their services over work-related grievances; 2) the purpose of withholding services was to cause the employer to resolve those grievances; 3) the workers sought a sufficiently specific remedy for those grievances; and 4) the workers' conduct was neither illegal, improper, nor

indefensible so as to deprive them of the protection afforded by section 7 of the NLRA, 29 U.S.C. §157.

We find that the Board's factual findings are supported by substantial evidence on the record viewed as a whole and are therefore conclusive. NLRA §10(e), as amended, 29 U.S.C. § 160(e). We also find that the Board's application of these findings is rational and consistent with the NLRA. Beth Israel Hospital v. NLRB, 437 U.S. 483, 501 (1978); Construction Erectors, Inc. v. NLRB, 661 F. 2d 801, 803 (9th Cir. 1981). Additionally, the Board acted reasonably and within its discretion both in its assertion of jurisdiction over the Association, see NLRB v. Carroll-Naslund Disposal, Inc., 359 F. 2d 779, 780 (9th Cir. 1966), and in its choice of remedy. See Industrial, Technical, and Professional Employees Division v. NLRB, 683 F. 2d 305, 308 (9th Cir. 1982). We note that a reinstatement

and back pay order is the normal remedy for an unlawful discharge and is expressly authorized by section 10(c) of the NLRA, 29 U.S.C. §160(c). See NLRB v. J.H. Rutter-Rex Mfg. Co., 396 U.S. 258, 263 (1969).

Accordingly, the Board's Order is ENFORCED.

FJZ

259 NLRB No. 136

D--8425
San Diego, CA

UNITED STATES OF AMERICA

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

SAN DIEGO COUNTY ASSOCIATION
FOR THE RETARDED

and

Case:
21-CA-19138

AIKO HINOJOSA, an Individual

DECISION AND ORDER

On August 17, 1981, Administrative Law Judge George Christensen issued the attached Decision in this proceeding. Thereafter, both the Respondent and the General Counsel filed exceptions and supporting briefs.

Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this

proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs [1] and has decided to affirm the rulings, findings, [2] and conclusions [3] of the Administrative Law

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1 The Respondent's request for oral argument is denied because in our opinion, the record, exceptions, and briefs adequately set forth the issues and positions of the parties.

2 The Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all the relevant evidence convinces us that the resolutions are incorrect. Standard Dry Wall Products, Inc., 91 NLRB 544 (1950), enfd. 188 F. 2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

3 In accordance with his dissent in Olympic Medical Corporation, 250 NLRB 146 (1980), Member Jenkins would award interest on the backpay due based on the formula set forth therein.

Judge and to adopt his recommended Order, as modified herein. [4]

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, San Diego County Association For the Retarded, San Diego, California, its officers, agents, successors, and assigns, shall take the action set forth

---

4 We find the Respondent's unlawful conduct in discharging eight employees for engaging in a strike so egregious as to demonstrate a disregard for its employees' fundamental statutory rights. We find it necessary, therefore, to order the Respondent to cease and desist from "in any other manner" interfering with, restraining, or coercing employees in the exercise of their protected Section 7 rights. Hickmott Foods, Inc., 242 NLRB 1357 (1979).

in said recommended Order, as so modified:

1. Substitute the following for paragraph 1:

" 1. Cease and desist from:

(a) Disciplining its employees for engaging in a strike for the purpose of securing satisfactory resolution of the work-related grievances.

(b) In any other manner interfering with restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act."

2. Substitute the following for paragraph 2(a):

"(a) Offer Robert Acosta, James Dunkin, David Gilmore, Aiko Hinojosa, Karen Pickell, Therese Sullivan, Genvieve West, and Warren Werwage immediate reinstatement to their former positions, if necessary terminating their replacements, or, if such positions no longer exist, to substantially equivalent

positions, without prejudice to their seniority or other rights and privileges previously enjoyed, and make them whole for any loss of earnings resulting from the discrimination practiced against them, in the manner described in "The Remedy" section of this Decision."

3. Substitute the attached notice for that of the Administrative Law Judge.

Dated, Washington, D.C.

January 13, 1982

John H. Fanning, Member

Howard Jenkins, Jr., Member

Don A. Zimmerman, Member

NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

WE WILL NOT discharge you for engaging in a strike for the purpose of causing us to favorably resolve your work-related grievances (grievances over your rates of pay, wages, hours, or working conditions).

WE WILL NOT in any other manner interfere with, restrain, or coerce you in the exercise of the right guaranteed you by Section 7 of the Act.

WE WILL offer Robert Acosta, James Dunkin, David Gilmore, Aiko Hinojosa, Karen Pickell, Therese Sullivan, Genvieve West, and Warren Warwage reinstatement to their former positions, if necessary terminating their replacements, or, if such positions no longer exist, to substantially equivalent positions without prejudice to their seniority or other rights and privileges previously enjoyed.

WE WILL make Acosta, Dunkin, Gilmore, Hinojosa, Pickell, Sullivan, West, and Werwage whole for any losses in wages or benefits they suffered by virtue of our discharging them for engaging in a strike to cause us to favorably resolve their work-related grievances, with interest.

SAN DIEGO COUNTY ASSOCIATION
FOR THE RETARDED

(Employer)

Dated----------By ----------
(Representative) (Title)

This is an official notice and must not be defaced by anyone.
This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, City National Bank Building, 24th Floor, 606 South Olive Street, Los Angeles California 90014, Telephone 213--688--5229.

JD-(SF)-230-81
San Diego, California

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
BRANCH OFFICE
SAN FRANCISCO, CALIFORNIA

SAN DIEGO COUNTY ASSOCIATION
FOR THE RETARDED

and

Case No.
21-CA-19138

AIKO HINOJOSA, An Individual

Robert R. Petering for the
General Counsel.
Christopher L. Ashcraft of
Thistle, Krinsky, Idler &
Lambert of San Diego,
California for Hinojosa.
John S. Adler of San Diego,
California for the Association.

DECISION

GEORGE CHRISTENSEN, Administrative Law Judge: On November 24-25, 1980 1/ I conducted a hearing at San Diego, California to try issues raised by a complaint

1/ Read 1980 after all further date references omitting the year.

issued on July 18 and amended on August 7, based upon a charge filed on June 9 and amended on July 17.

The amended complaint alleged the San Diego County Association for the Retarded (Association) violated Section 8(a)(1) of the National Labor Relations Act, as amended, (Act), by discharging eight employees because they engaged in protected, concerted activites for the purpose of collective bargaining or other mutual aid and protection.

The Association conceded it discharged the eight but contended the jurisdiction of the National Labor Relations Board (Board) either does not or should not be extended to its operations and denied the eight employees were discharged for engaging in unlawful, unprotected activities.

The issues are whether the Board has jurisdiction over the Association; if so, whether it should exercise that jurisdic-

tion; and if so, whether the eight discharges were violative of the Act.

The parties appeared by counsel at the hearing and were afforded full opportunity to adduce evidence, examine and cross-examine witnesses, argue and file briefs. Briefs were filed by the General Counsel and the Association.

Based on my review of the entire record, observation of the witnesses, perusal of the briefs, analysis and research, I enter the following:

Findings of Fact

I. Jurisdiction

The amended complaint alleged, the answer admitted and I find at all pertinent times the Association was a non-profit California corporation engaged in the business of educating and training mentally retarded children and adults; that it operated four facilities in San Diego

County, California, including a facility known as the Arrow Center (Center) at 3035 G Street, San Diego, California; and that during the year 1979 it received gross revenues in excess of $250,000 from its operations, grants in excess of $5,000 from the United States Department of Labor, and purchased and received goods and products from outside of California valued in excess of $5,000.

On the basis of the foregoing, I find and conclude at all pertinent times the Association was an employer engaged in commerce in a business affecting commerce within the meaning of Section 2 of the Act. I further find and conclude, in view of the nature, substantiality and scope of the acts alleged in the complaint as violative of the Act and their actual or potential effect on interstate commerce, it effectuates the purposes of the Act to

to exercise jurisdiction in this case.

II. The Alleged Unfair Labor Practices

A. The Center's Operations

At times pertinent the Center employed approximately 20 teachers or instructors and aides in its Activities Department and 12 supervisors, instructors and aides in its Workshops Department for the purpose of training and instructing about 185 students ranging between 22 and 60 years of age, with IQ's of between 20 through 70, with most students at the lower end of that range. Charles E. Covell was the Director of the Center and in overall charge of its operations. Directly under Covell and in charge of the Activities Department was Dorothy Cummings, Activities Supervisor. 2/

2/ I find at all times Covell and Cummings were supervisors and agents of the Association acting on its behalf within the meaning of Section 2 of the Act.

Included among the teachers or instructors and aides in Activities in late April were Robert Acosta, James Dunkin, Julie Fish, David Gilmore, Maureen Hillman, Aiko Hinojosa, Karen Pickell, Ruri Pierre, Therese Sullivan, Genvieve West and Warren Werwage. 3/

B. The Concerted Activities and the Discharges

In late April, Hinojosa was teaching a class of approximately 20 students in Basic Education II, assisted by two aides. Several days prior to Friday, April 25, Covell gave his written approval to Hinojosa's proposal for her and another class to take a field trip to the zoo on April 25. Following that approval, Hinojosa informed her class of the scheduled trip and they discussed what they would see

3/ Teachers and aides from the California school system also worked at the Center; the employees named above were full-time Association employees at the Center.

and do during the trip.

At about 2:00 p.m. on April 24, Cummings informed Hinojosa the field trip was cancelled since Covell, forgetting it had been scheduled, granted the school bus driver's request for a day off on April 25. Hinojosa protested the cancellation, stating Covell already approved the trip and it was up to the administration to find another driver. Cummings replied there was another person qualified to drive the bus employed in the workshops and stated she would check into the possibility of assigning that person to drive the bus on April 25.

Hinojosa discussed the problem with another Activities Department employee, Ruri Pierre, and Pierre stated she could and would be willing to drive the bus, since she did so on several previous occasions when it was necessary to transport

students between the Center and various destinations.

When Hinojosa checked back with Cummings over the scheduled trip, Cummings informed her the trip was still off, she had not been able to make the necessary arrangements. Hinojosa suggested she contact Pierre, since Pierre could and would drive. Cummings told Hinojosa to forget about it, "the front office is in a bad mood."

By the time Hinojosa had Cummings' final word, most of her class had gone home (at approximately 3:15 p.m.). Pierre and Gilmore joined Hinojosa in her classroom and Hinojosa voiced her frustration over her inability to proceed with the trip, the disappointment she anticipated among her students the following day, particularly since she had not been able to inform them of the cancellation before they left the Center that day, and her

anger at the administration's handling of the matter. Gilmore stated he would talk to Covell. He left the other two, returned a short time later, and informed them while he caught Covell in the parking lot, Covell proceeded to his car and drove off, refusing to discuss the matter, which angered Gilmore.

The three discussed the entire matter, their dissatisfaction with that and other administration actions, and decided to gather their associates. Within a short time Acosta, Dunkin, Fish, Hillman, Pickell, Sullivan, West and Werwage arrived. Hinojosa, Gilmore and Pierre informed them what had happened. In the ensuing discussion, various staff members recounted grievances and complaints they had against the administration. The group finally agreed Fish would prepare a list of their grievances from notes she and Pickell took

during the course of the meeting; 4/ that Fish and Pierre 5/ would present their grievances to Covell the following morning at the regular Friday morning staff meeting 6/

4/ The notes included the following grievances: (1) cancellation of the April 25 field trip and management refusal to discuss the cancellation; (2) understaffing; (3) too heavy workload; (4) inconsistency in pay scales; (5) overtime payments scheduling; (6) failure of management to communicate with staff re alleged budgetary limitations; (7) failure of management generally to communicate with staff re problems and attempt to resolve them; (8) providing the services of a nurse; etc.

5/ In an election conducted by Covell and Cummings the previous year, Fish was elected "staff representative" and Pierre was elected as her alternate. Fish and representatives similarly elected from the other three facilities operated by the Association met periodically with representatives of the Executive Director of the Associaiton to discuss personnel and related problems.

6/ Covell regularly conducted a staff meeting each Friday morning between 8:00 and 8:45 a.m.; the staff was scheduled to report for work at 8:00 a.m.; the students arrived at the Center between 8:30 and 9:00 a.m.; classes and workshops commenced at 9:00 a.m.

and that all those present other than Fish and Pierre would withhold their services beginning the following morning at 8:00 a.m. and gather instead at Pickell's home to demonstrate their solidarity and impress Covell with the seriousness of thier grievances and the necessity to resolve those grievances in a manner satisfactory to the grievants. 7/ It was also agreed Fish or Pierre would telephone the assembled group at Pickell's home the following morning and advise them of Covell's reaction to the presentation of their grievances. The group did not consider or decide what they would do if the reaction was unsatisfactory.

By shortly after 8:00 a.m. on Friday, April 25, Covell and Cummings were aware

7/ Fish opposed this decision, favoring attendance of the entire group at the staff meeting the following morning and a presentation of the grievances at that time, but was overruled.

almost the entire Activities staff were withholding their services that day, since most of the absentees telephoned the Center, spoke either to Covell or Cummings, and stated they would not be in (with some stating they were sick). When Cummings secured their time records to note the absences, she discovered they already were marked absent (with some marked "sick"), advised Covell of the markings, and observed the records must have been marked the previous day. 8/

When Covell and Cummings arrived for the staff meeting, Covell commented it looked like most of the Activities staff were withholding their services to express

8/ Cummings was correct; Dunkin procured the time records of the group during the meeting the previous day, distributed them to the group, each member marked himself or herself absent for April 25 and in some cases inserted "sick" as the reason; and Dunkin returned the records to the office.

their anger over the reduction scheduled for that day in the number of their assistants. 9/ Pierre responded that was not the reason the Activities staff was withholding their services that day, that she and Fish had been asked by the staff to present their reasons, and requested a meeting. Covell assented and he, Cummings, Fish, Pierre, Donna Rosenberg and Muriel Collins proceeded to Cummings' office. 10/ While the ensuing discussion was under way, Hillman arrived and joined the

9/ Personnel from the Adult Education division of the California schools regularly assisted the staff in educating and training the students; their numbers were reduced on April 25.

10/ Rosenberg and Collins were on the Workshops staff, Rosenberg was Fish's predecessor as elected staff representative and Fish thought the familiarity of the two with several of the matters set out in the grievances and their input at the conference would be helpful.

conference. 11/ The conference began at about 8:30 a.m. Fish followed the procedure of reading off a grievance from her list, adding her comments, soliciting the comments and views of the others present on the subject matter of that grievance, responding to those comments, etc. Both Fish and Covell were tense and at times spoke in raised voices. Fish was only part-way through the list when Covell, noting the time and the presence of a large number of students on the grounds, stated it was getting close to starting to time, he was going to have to cover the classes and workshops, and the meeting would have to continue at

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11/ While Hillman agreed to join the other members of the Activities staff in withholding her services on April 25 and to join the others at Pickell's home that day, she changed her mind overnight and decided to report for and go to work.

some other time. 12/ At that time Fish advised Covell she could summon the strikers by telephone. Covell requested she do so, suggesting the discussion of the grievances and complaints resume at a noon staff meeting. Pierre went to the telephone while Fish and Covell continued their discussion of the grievance before them. When Pickell answered the telephone, and while she and Pierre exchanged greetings, Pickell heard raised voices in the background; Pickell asked Pierre how it was going and Pierre responded it was not going well and advised Pickell to tell the group to come in to work. Pickell replied she would relay Pierre's advice to the group.

12/ By doubling classes and assigning Workshops staff to cover some of the classes in Activities, all classes and workshops were manned without incident and without bringing in additional personnel.

Following completion of Pierre's call, the Covell-Fish conference terminated and the participants went to their respective classrooms, workshops and other duties.

By 10:00 a.m. the absentee Activities staff had not come in. Both Covell and Cummings asked Fish why they weren't in, Covell stating if they weren't in by noon, action could be taken against them, including discharge. 13/ Fish telephoned Pickell and asked why the staff hadn't come in, stating their absence was putting her in a bad position, that Covell was going to take action against them (including possible discharge) if they weren't in by noon, though everything was under control (all classes

13/ Covell testified the Association's Executive Director, Richard B. Farmer, had to authorize any disciplinary action before it could be effected and Farmer was out of town on April 25; he therefore had to defer taking any action until he contacted Farmer with his report and recommendations and secured Farmer's decision on what action would be taken.

and workshops covered). Pickell's reply was evasive; she told Fish not to worry, the strikers were discussing strategy.

Following that conversation, Fish realized the absentees no longer trusted or were willing to follow her lead: she subsequently advised Cummings she resigned as staff representative.

The strikers decided after prolonged discussion concerning the telephone calls and their position, that since they risked discipline whether or not they reported for work, they would continue on strike for the entire day, go in as a group their next scheduled workday (Monday, April 28), and demand Covell meet with them as a group and resolve their grievances prior to any return to work.

When Covell made contact with Farmer (on Saturday, April 26), Farmer gave Covell carte blanche concerning Association action against the employees who engaged in the Friday strike. Covell decided to discharge

all the employees who engaged in the Friday strike because, as he put it, "leaving the whole day without coming in and basically for--to get some attention for me to listen to some grievances, was not a valid thing."

The strikers never had the opportunity to present and attempt to resolve their grievances. When they arrived at the Center on April 28, they were instructed to report to Room 14. Prior to proceeding to that room, Fish notified the strikers she no longer could speak for them, she had resigned as staff representative. Fish and Pierre accompanied the strikers to Room 14, where Covell read a prepared statement wherein he accused the strikers of irresponsible conduct, stated he was deeply disturbed over their action, stated the staff manual set out a chain of command and procedures

of grievances, 14/ addressed some of the grievances on the list Fish gave him the

14/ Referring to a provision of the manual stating "If you have any questions, complaints or problems about your work or position with DWCAR, your point of view and the facts will be fairly and reasonably considered. You should first discuss the matter with your immediate supervisor (Cummings), you may then request a conference with the area director (Covell). . . If the problem is not resolved to the satisfaction of the employee, he may request action from the Personnel Practices Committee. If still not resolved, action may be requested from the Board of Directors.

the preceding Friday, 15/ and stated since the strikers chose strike action against the Association to pressure him into resolving their grievances to their satisfaction rather than reporting for work and processing their grievances through Cummings, et al., they were discharged. He closed with a direction

15/ Fish was requested to and surrended the list of grievances before reporting to her assigned class on April 25. Covell, referring to the list, stated the board was considering granting substantial pay raises--that he had requested budget increases to supply many items sought by the strikers--that he and the board were trying to secure more classroom space and money to improve present classrooms and relieve overcrowded conditions--that the four centers were budgeting for one-fourth of a nurse apiece so a nurse's services could be provided for the four centers--that he was trying to secure budget increases to alleviate their complaints over the constant increases in the number of students without corresponding increases in staff to handle them--that the executive director was seeking wages more comparable to the norm, the institution of a retirement plan and better health and dental plans--and that he would in the future make more of an effort to counsel with the staff and to resolve their grievances.

to turn in all keys and other Association property, to gather all personal property, to be off the premises by 9:00 a.m., and not to re-enter the premises unless and until they made an appointment with him. At the close of his statement, Pierre announced since she was part of the strike group and fully supported the strike, she resigned. Following the discharges and the resignation, only Fish, Hillman and Jan Gilbert continued to work in the Activities Department. 16/

At a subsequent (May 1) meeting sought by the eight discharged and one resigned

16/ Gilbert did not attend the employee grievance meeting of April 24 but did join the group at Pickell's home on April 25 and joined in their decision that day to remain on strike all day; Covell was unaware of the latter and stated at the hearing he intended to confront Gilbert, ask her directly about the extent of her support of the strike and, depending on her answer, decide what action was appropriate.

employee with Farmer 17/ for the purpose of requesting reinstatement, Farmer not only rejected the request, he informed the nine they were finished in the field (educating and training the handicapped) within the area, since he had contacts with "everybody" and"word gets around fast." 18/

C. Analysis and Conclusions

When two or more employees withhold their services (strike) for the purpose of pressuring their employer into resolving to their satisfaction grievances over their

17/ I find at all pertinent times Farmer was a supervisor and agent of the Association acting on its behalf within the meaning of Section 2 of the Act.

18/ The findings in this section (b) are based upon the testimony of Collins, Covell, Cummings, Fish, Hillman, Hinojosa, Pickell and Pierre and documentation, with any conflicts between the testimony of Hinojosa, Pickell and Pierre and that of the other witnesses resolved by crediting the testimony of Hinojosa, Pickell, and Pierre, since their testimony was the more plausible, sincere and creditable in the conflicting areas.

rates of pay, wages, hour or working conditions, they engage in "concerted activities for the purpose of collective bargaining or other mutual aid or protection" within the meaning of Section 7 of the Act and it is unfair labor practice within the meaning of Section 8(a)(1) of the Act for their employer "to interfere with, restrain or coerce" (discharge) them for so engaging. 19/

The Association argues its discharge of the eight strikers did not violate the Act because: (1) they did not go on strike over work-related grievances; (2) their strike did not further any interest they had in resolving work-related grievances;

19/ N.L.R.B. v. Washington Aluminum Co., 370 U.S. 9 (S.C. 1962); N.L.R.B. v. Robertson Industries, 560 F.2d 396 (C.A. 9, 1976); Shelley & Anderson Furniture Mfg. Co. v. N.L.R.B., 497 F.2d 1200 (C.A. 9, 1974); First National Bank of Omaha v. N.L.R.B., 413 F.2d 921 (C.A. 8, 1969), etc.

(3) they were not seeking a specific remedy or result by virtue of their strike; and (4) their strike was unlawful, and/or improper and/or indefensible.

Findings have been entered on April 24 the eight (plus Fish, Pierre and Hillman) met after work on April 24 and developed a number of grievances for presentation to Covell the following morning at 8:00 a.m. Those grievances involved wages (inconsistent pay scales), hours (overtime payment, scheduling) and working conditions (understaffing; too heavy a workload; failure to advise re alleged budgetary limitations; failure to communicate with staff re problems and attempt to resolve them; arbitrary cancellation of a field trip and refusal to discuss reasons therefor; etc.).

I find the foregoing were work-related grievances.

The Association contends, assuming the

above-recited matters were work-related grievances, the strikers did not go on strike at 8:00 a.m. on April 25 to cause Covell to resolve those grievances to their satisfaction, but rather for the limited purpose of securing Covell's attention.

I reject the argument; certainly the strikers decided on April 24 to commence a strike on April 25 at 8:00 a.m. to secure his attention; but also to cause Covell to resolve those grievances to their satisfaction. I therefore find and conclude the strikers went on strike at 8:00 a.m. to cause Covell to resolve their work-related grievances in a manner satisfactory to them, i.e., to further their interests vis-a-vis those grievances.

The Association next argues, even if the strikers went on strike for the purpose of causing Covell to resolve work-related grievances to their satisfaction, from

the time Covell stated his willingness to meet and discuss the grievances with them, their objective was accomplished and the strike thereafter became an individual decision by each striker to remain off work rather than risk discharge for making a false statement of his or her reason for withholding service (by calling in sick or placing the word sick on a time record) or for unauthorized absence (in view of Covell's comment any employee who failed to report for work by noon risked discipline, including possible discharge), and thus was unprotected after that time.

I reject this contention. Findings have been entered the strikers on April 24 agreed to go on strike at 8:00 a.m. on April 25, and to continue on strike, until they received a report on Covell's reaction to the presentation of their grievances, without considering or deciding what they would

do following receipt of that report; and that, after they received that report, they decided to continue on strike the balance of April 25 and until they learned Covell's reaction to their appearance en masse at the Center at 8:00 a.m. and demand for his consideration and resolution of their grievances in a manner satisfactory to them (a demand they never had the opportunity to make). It is undisputed the strikers at their April 25 meeting discussed the fact a number of them called in sick and marked their time cards as sick, that the appearance of those strikers at the Center that day would constitute an admission they were not ill, and that Covell might discipline them on that basis, but it is equally undisputed other strikers did not call in sick nor mark themselves as sick, Covell was well aware they were out on strike and not

sick, 20/ and that after such discussion, the strikers decided as a group to remain on strike at least until they heard Covell's April 28 response to their demand for resolution of their grievances.

On the basis of the foregoing, I find at all times on April 25 the eight discharged employees were engaged in a strike for the purpose of causing the Association to resolve work-related grievances to their satisfaction.

In view of the foregoing, I find the eight were seeking a remedy for their grievances of sufficient specificity within

20/ Covell termed the strike a "sickout" when Cummings pointed out how some of the strikers marked their timecards at 8:00 a.m. on April 25 and stated at the opening of the April 25 staff meeting most of the Activities staff apparently were on strike because of their dissatisfaction at the loss of services of personnel from Adult Education that day.

the meaning of the cases recited above (see fn. 19, particularly Shelly, where a strike for the purpose of causing the employer to negotiate earnestly was considered sufficient purpose for the strike).

Lastly, the Association contends, even if the eight discharged employees went on strike for the purpose of achieving satisfactory resolution of work-related grievances, their conduct nevertheless was unprotected within the meaning of Section 7 and 8(a)(1) of the Act because it was unlawful, and/or improper, and/or indefensible--arguing alleged falsification of time cards, and/or failure to resort to established procedures for grievance resolution instead of striking and/or alleged exposure of students and staff to "dangerous conditions" constituted such unlawful and/or improper and/or indefensible conduct.

The obvious answer to the first contention is Covell did not discharge any of the eight for alleged falsification of a time card. Both in his April 28 oral discharge notice and his accompanying written termination notices, Covell gave only one reason for discharge--seeking to resolve grievances through strike action rather than through established grievance procedures. It is further evident not all of the eight employees discharged marked "sick" on their time cards (or called in "sick"). On the basis of the foregoing, I find and conclude the entry by some of the eight of the word "sick" on their time cards (or calling in "sick") is irrelevant, since that entry and notice was not the reason for their discharge. I further find and conclude, in any event, the entries and calls are insufficient basis for finding those discharged employees who reported their April 25 absences on strike were occasioned

by illness thereby engaged in concerted activities unprotected by Section 7 and 8(a)(1) of the Act.

With regard to the election by the strikers to go on strike against the Association in an attempt to secure satisfactory resolution of their grievances rather than resorting to the procedure set out in the staff manual for the resolution of grievances, I find no authority for the premise such election denies strikers the protections afforded by the Act; in fact, there is authority to the contrary. 21/ A contrary holding would make a travesty of the protections afforded by Section 7 and 8 of the Act, for an employer by the device of

21/ See Washington Aluminum, ibid., holding the existence of a rule prohibiting absences without permission without effect, and First National Bank of Omaha, ibid, holding the grievants had no duty to refrain from striking while giving their employer an opportunity to resolve their grievances.

unilaterally establishing a procedure for the processing of employee grievances could effectively bar employees from resorting to direct economic action for their satisfactory resolution, a right guaranteed by the Act. I also note the procedure is permissive, not mandatory. I therefore find by engaging in direct, economic action to achieve a satisfactory resolution of their grievances rather than resorting to the grievance procedure unilaterally established by the Association for permissive resort thereto, the eight discharged employees did not engage in illegal, improper or indefensible conduct depriving them of the protections afforded by Section 7 and 8(a)(1) of the Act.

The Association next contends by engaging in the April 25 strike, the eight discharged employees subjected the students and staff at the Center to "dangerous conditions" and thus removed themselves from the protection of the Act.

It is undisputed all classes and workshops were manned by instructors or aides previously scheduled for work on April 25, without incident, and without calling in additional help. Thus the short answer to this contention is it is speculative without proof the strikers created "dangerous conditions" by their absence, and proof similar staff shortages in the past produced "dangerous conditions." I therefore find the Association failed to establish the eight striking employees subjected the students and staff to "dangerous conditions" warranting a finding by striking against the Association on April 25 in an effort to secure satisfactory resolution of their work-related grievances they engaged in conduct unprotected by Section 7 and 8 of the Act.

On the basis of the factual findings, analysis and conclusions set out above, I find and conclude on April 28 the Association

violated Section 8(a)(1) of the Act by discharging Acosta, Dunkin, Gilmore, Hinojosa, Pickell, Sullivan, West and Werwage for engaging in a strike on April 25 for the purpose of causing the Association to resolve their work-related grievances in a manner satisfactory to them.

Conclusions of Law

1. At all pertinent times the Association was an employer engaged in commerce in a business affecting commerce within the meaning of Section 2 of the Act.

2. At all pertinent times Farmer, Covell and Cummings were supervisors and agents of the Association acting on its behalf within the meaning of Section 2 of the Act.

3. The Association violates Section 8(a)(1) of the Act by discharging Acosta, Dunkin, Gilmore, Hinojosa, Pickell, Sullivan,

West and Werwage for engaging in a strike for the purpose of causing the Association to resolve their work-related grievances in a manner satisfactory to them.

4. The aforesaid unfair labor practices affected commerce as defined in Section 2 of the Act.

The Remedy

Having found the Association engaged in an unfair labor practice in violation of Section 8(a)(1) of the Act, I recommend the Association be directed to cease and desist therefrom and to take affirmative action designed to effectuate the purposes of the Act. Having found the Association discharged Acosta, Dunkin, Gilmore, Hinojosa, Pickell, Sullivan, West and Werwage for engaging in concerted activities protected by the Act, I recommend the Association be directed to offer Acosta Dunkin, Gilmore, Hinojosa, Pickell, Sullivan, West and Werwage

reinstatement to their former positions, if necessary terminating any employees hired to replace them, 22/ and to make them whole for any losses in wages or benefits they suffered by virtue of the discrimination against them, with the amounts due calculated in the manner set out in F. W. Woolworth Co., 90 NLRB 289, and interest thereon computed in accordance with the formula set out in Florida Steel Corp., 231 NLRB 651 and Isis Plumbing & Heating Co., 138 NLRB 716.

On the basis of the foregoing findings

22/ I reject the Association's contention the eight are barred from reinstatement by their participation in the preparation and circulation to parents of the students and the public of a letter on April 28, 1980 wherein they appealed to the parents and the public for support in their effort to resolve the work-related grievances which led to their strike and their discharges. Appeals by strikers to third parties for support concerning issues related to their dispute with their employer do not deprive strikers of reinstatement rights under the Act.

of fact, conclusions of law and the entire record, and pursuant to Section 10(c) of the Act, I recommend the issuance of the following: 23/

ORDER

San Diego County Association for the Retarded, its officers, agent, successors and assigns, shall:

1. Cease and desist from disciplining its employees for engaging in a strike for the purpose of securing satisfactory resolution of their work-related grievances; and

2. Take the following affirmative action designed to effectuate the purposes of the Act:

23/ In the event no exceptions are filed as provided by Section 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Section 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

(a) Offer to Robert Acosta, James Dunkin, David Gilmore, Aiko Hinojosa, Karen Pickell, Therese Sullivan, Genvieve West and Warren Werwage reinstatement to their former positions, if necessary terminating any employees hired or assigned to replace them in those positions;

(b) Make whole Acosta, Dunkin, Gilmore, Hinojosa, Pickell, Sullivan, West and Werwage in the manner set out in "The Remedy" section of this decision;

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payments records, timecards, personnel records and any other records necessary to analyze and determine the amounts due to Acosta, Dunkin, Gilmore, Hinojosa, Pickell, Sullivan, West and Werwage under the terms of this Order;

(d) Post at its premises in San Diego, California, copies of the attached notice marked "Appendix." 24/ Copies of that notice, on forms provided by the Regional Director for Region 21, shall be signed by an authorized representative of the Association and posted immediately upon their receipt and maintained for 60 consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken to ensure the notices are not altered, defaced or covered by other material.

24/ In the event that the Board's Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall be changed to read "POSTED PURSUANT TO A JUDGMENNT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

(e) Notify the Regional Director for Region 21, in writing, within 20 days from the date of this Order, what steps the Association has taken to comply herewith.

Dated: August 17, 1981

George Christensen
Administrative Law Judge

FORM NLRB-4707 (9-80)

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD

AN AGENCY OF THE UNITED STATES GOVERNMENT

After a trial before the above agency, it issued a decision finding we committed an unfair labor practice and directed that we post this notice advising you we will do the following to remedy that unfair practice:

WE WILL NOT discharge you for engaging in a strike for the purpose of causing us to favorably resolve your work-related grievances (grievances over your rates of pay, wages, hours or working conditions).

WE WILL offer ROBERT ACOSTA, JAMES DUNKIN, DAVID GILMORE, AIKO HINOJOSA, KAREN PICKELL, THERESE SULLIVAN, GENVIEVE WEST and WARREN WERWAGE reinstatement to their former positions, if necessary terminating their replacements.

WE WILL make Acosta, Dunkin, Gilmore, Hinojosa, Pickell, Sullivan, West and Werwage whole for any losses in wages or benefits they suffered by virtue of our discharging them for engaging in a strike to cause us to favorably resolve their work-related grievances.

SAN DIEGO COUNTY ASSOCIATION FOR THE RETARDED

(Employer)

Dated _____ By _____

(Representative) (Title)

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office,

City National Bank Bldg., 24th Floor
606 South Olive St., Los Angeles, CA 90014
Telephone: (213) 688-5229

In re
SAN DIEGO COUNTY ASSOCIATION FOR THE RETARDED
v.
UNITED STATES COURT OF APPEALS and NATIONAL LABOR RELATIONS BOARD

AFFIDAVIT OF SERVICE--SERVICE BY MAIL

State of California)
) ss
County of San Diego)

I, JOHN S. ADLER, depose and say that I am an attorney in the office of ADLER and GNIATKOWSKI, attorneys of record for SAN DIEGO COUNTY ASSOCIATION FOR THE RETARDED, the Petitioner herein, and that on April 29, 1983, pursuant to Rule 33, Rules of the Supreme Court, I served three (3) copies of the foregoing Motion For Leave To File Petition For Writ Of Certiorari and Petition For Writ Of Certiorari on each of the parties required to be served herein, as follows.

By mailing the copies in a duly addressed envelope, with first class postage prepaid, to the following parties:

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT
P. O. Box 547
San Francisco, CA 94101

DAVID FLEISCHER, Esq.
NATIONAL LABOR RELATIONS BOARD
1717 Pennsylvania Avenue, NW
Washington, D.C. 20570

All parties required to be served have been served.

Dated: April 29, 1983.

ADLER and GNIATKOWSKI

By /s/ John S. Adler
JOHN S. ADLER
Attorney for Petitioner
SAN DIEGO COUNTY
ASSOCIATION FOR THE RETARDED

On April 29, 1983 before me, the undersigned, a Notary Public in and for said State, personally appeared JOHN S. ADLER, known to me to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same.

WITNESS my hand and official seal.

/s/ Bonnie R. Reiff-Craig
Notary Public in and for said State

In re
SAN DIEGO COUNTY ASSOCIATION FOR THE RETARDED v. UNITED STATES COURT OF APPEALS and NATIONAL LABOR RELATIONS BOARD

AMENDED AFFIDAVIT OF SERVICE-------BY MAIL

State of California)
) ss
County of San Diego)

I, JOHN S. ADLER, depose and say that I am an attorney in the office of ADLER and GNIATKOWSKI, attorneys of record for SAN DIEGO COUNTY ASSOCIATION FOR THE RETARDED, the Petitioner herein, and that on May ___, 1983, pursuant to Rule 33, Rules of the Supreme Court, I served three (3) copies of the foregoing Motion For Leave To File Petition For Writ Of Certiorari and Petition For A Writ Of Certiorari on each of the parties required to be served herein, as follows:

By mailing the copies in a duly addressed envelope, with first class postage prepaid, to the following parties:

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT
P. O. Box 547
San Francisco, CA 94101

DAVID FLEISCHER, Esq.
NATIONAL LABOR RELATIONS BOARD
1717 Pennsylvania Avenue, NW
Washington, D.C. 20570

All parties required to be served have been served.

Dated: May 12, 1983.

ADLER and GNIATKOWSKI

By _____
JOHN S. ADLER
Attorney for Petitioner
SAN DIEGO COUNTY
ASSOCIATION FOR THE RETARDED
530 "B" Street, Suite 2001
San Diego, CA 92101-4466

On May 12, 1983, before me, the undersigned, a Notary Public in and for said State, personally appeared JOHN S. ADLER, known to me to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same.

WITNESS my hand and official seal.

_____
BONNIE R. REIFF-CRAIG
Notary Public in and
for said State

OFFICIAL SEAL
Bonnie R. Reiff-Craig
NOTARY PUBLIC-CALIFORNIA
PRINCIPAL OFFICE IN
SAN DIEGO COUNTY
My Commission Expires Dec. 22, 1984